



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/503,429	02/14/2000	Thomas Blaszczykiewicz	202.000080	6587

24041 7590 04/25/2002
SIMPSON & SIMPSON, PLLC
5555 MAIN STREET
WILLIAMSVILLE, NY 14221-5406

EXAMINER

WACHTEL, ALEXIS A

ART UNIT	PAPER NUMBER
----------	--------------

1771

DATE MAILED: 04/25/2002

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/503,429

Applicant(s)

BLASZCZYKIEWICZ, THOMAS

Examiner

Alexis Wachtel

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: _____

Detailed Action

Restriction Requirement

1. Election of claims 1-12 for examination has been acknowledged as per paper #5.

Specification

2. The use of the trademark Lycra has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claims 2-5, contains the trademark/trade name "Lycra". Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of

Art Unit: 1771

goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe spandex and, accordingly, the identification/description is indefinite.

6. The terms "bright" and "semi-dull" in claim 5 are relative terms which render the claim indefinite. The terms "bright" and "semi-dull" are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1,4,6-9 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,139,476 to Peters.

With regards to claims 7 and 8, the method limitations of compressing the foam layer are given no patentable weight at this time because said method limitations do not structurally change the final product which is an open cell foam covered on both sides by elasticized fabric.

Peters is directed to knee wraps and teaches a laminate comprising a flexible resilient elasticized fabric laminate comprising an outer elasticized fabric layer, an open

Art Unit: 1771

cell polymeric foam core and an inner or proximal elasticized fabric layer. The foam core is coextensive with and adhered to both inner and outer layers. The laminate is stretchable in all directions. The outer elasticized layer is preferably a high moisture absorbent fabric comprising a blend of at least one inelastic fiber and at least one elastic fiber, with a blend of inelastic polyamide and elastic polyurethane being currently preferred. The outer surface has a brushed felt-like texture comprising myriad upstanding and relatively free fiber loop fastening means. The inner layer is preferably a low moisture absorbent but good wicking fabric comprising a blend of cotton and at least one elastic fiber, with a blend of inelastic polyamide and elastic polyurethane fiber. The polymeric open cell foam core can be made from polyurethane, polystyrene or polyethylene foam (Col 3, lines 20-42).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2,3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,139,476 to Peters.

Although Peters, as set forth above fails to teach using polyester as one of fibers for the inner layer, Peters does teach that polyester can be used in the fabrics of the laminate (Col 3, lines 9-17). In view of this teaching it would have been obvious for one

Art Unit: 1771

of ordinary skill in the art at the time the invention was made to have used polyester fibers rather than cotton fibers in the inner layer motivated by the desire to exploit a cheap and durable fiber well known and used in the art.

With regards to claim 3, Peters as set forth above fails to teach the claimed proportions of lycra to polyester in the inner layer. However, it would have been obvious for one of ordinary skill in the art at the time the invention was made to have optimized the strength, and stretchability of the inner layer of Peters's laminate by selecting the relative proportions of the components through the process of routine experimentation.

With regards to claim 5, Peters as set forth above fails to teach using bright nylon, semi dull nylon and bright lycra in the outer layer. Examiner takes Official Notice that the use of bright and dull fibers in fabrics are well known and utilized in the textile art for the purpose of manufacturing a fabric having a specific surface appearance. Thus it would have been obvious for one of ordinary skill to have used dull and bright nylon and bright lycra as the fibers in the outer layer motivated by the desire to improve the attractiveness of Peter's laminate.

With regards to claim 5, Peters as set forth above fails to teach the claimed proportions of bright lycra to bright and dull nylon. However, it would have been obvious for one of ordinary skill in the art at the time the invention was made to have optimized the sheen and reflectiveness of the outer layer of Peter's laminate by selecting the relative proportions of the components through the process of routine experimentation.

11. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,139,476 to Peters in view of US 5,900,087 to Chakrabarti et al.

Art Unit: 1771

Peters as set forth fails to teach laminating the inner, central and outer layers by flame lamination.

Chakrabarti et al is directed flame bondable foams and teaches that it is well known that the flame bonding of flexible foams is used in general for the preparation of systems comprising polyurethane (PUR) flexible foams laminated with various sheet-like materials such as textiles, plastic films, papers etc. In view of this teaching and the absence of any specific teaching in Peters of the type of lamination employed it would have been obvious for one of ordinary skill in the art at the time the invention was made to have flame laminated the inner and outer fabric layers to the inner foam layer of Peter as set forth above motivated by the desire to make use of a well known and effective method for adhering foam to fabric.

Conclusion

12. The prior art of record and not relied upon is considered pertinent to Applicant's disclosure. In addition, the following references are cited for disclosing various aspects of Applicant's invention:

US 5738937
US 5689828
US 4782605
US 5160314

13. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Alex Wachtel, whose number is (703)-306-0320. The Examiner can normally be reached Mondays-Fridays from 10:30am to 6:30pm.

If attempts to reach the Examiner by telephone are unsuccessful and the matter is urgent, the Examiner's supervisor, Mr. Terrel Morris, can be reached at (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Art Unit: 1771

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


ELIZABETH M. COLE
PRIMARY EXAMINER